Governor Pete Wilson

Public Notice and Land Use Planning:

An Overview of the Statutory Requirements for Public Notice, Circulation, and Review

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INTRODUCTION

California's land use and environmental law is based, in part, on the constitutional principles of due process which require land owners to be apprised of regulations which may affect their property rights. As a practical matter, planning and environmental regulation are most effective when they have active involvement of the public and the support of broad public consensus.

The purpose of this document is to explain the statutory requirements for public notice, circulation, and review as required under the California Environmental Quality Act; the Ralph M. Brown Act; each of the Acts comprising the State Planning, Zoning, and Development Laws; and other related statutes. The reader is assumed to have a working knowledge of each topic, so this analysis will not delve into their other substantive requirements.

Please note that the information contained in this document is advisory in nature and that statutory changes may occur at any time. Readers should consult the referenced statutes to familiarize themselves with the requirements. All references are to the California Government Code unless noted otherwise.

I. RALPH M. BROWN ACT

The "Brown Act" establishes the basic requirements for open meetings and notice of hearings for commissions, boards, councils, and other public agencies. These may include, but are not limited to, city councils, board of supervisors, planning commissions, boards of zoning, and any other commissions, committees, boards, or any other body of a local agency, whether permanent or temporary, decision making or advisory (§54952(b)). Meetings of a standing committee composed of less than a quorum of the legislative body of a local public agency are also subject to the requirements if the committee has the responsibility of providing advice concerning budgets, audits, contracts, and personnel matters to and upon request of the legislative body (95 Ops.Cal.Atty.Gen 614 (1996)).

Most other acts, including the Subdivision Map Act, California Environmental Quality Act and other provisions of the California Government Code, establish public notice and review requirements beyond the Brown Act for land use entitlements and making environmental determinations. However, where other acts lack specific procedures, the requirements of the Brown Act provide the minimum requirements for notice and hearing(§54950 et seq.).

The Brown Act requires that all regular meetings be open, public, and all persons permitted to attend, with certain exceptions (§54953). If they so choose, a legislative body may allow greater access to public meetings than otherwise prescribed by the Act (§54953.7).

Procedural Requirements:

Agendas for meetings and hearings before commissions, boards, councils, and other agencies must be posted in a location that is freely accessible to members of the public **72 hours** prior to a regular meeting. The agenda must contain a brief general description of each item to be discussed and the time and location of the meeting (§54954.2). For the purposes of complying with the 72 hour posting requirement, weekend hours count as part of the notice period. However, the notice must be posted in a location where it can be read by the public at any time during the 72-hours prior to the hearing (78 Ops.Cal.Atty.Gen 327 (1995)).

Notice by Request: Any person who has filed a written request with the legislative body must be mailed notice of every regular meeting or special meeting which is called at least one week in advance. In the case of special meetings called less than 7 days prior to the date of the meeting, notice may be given in any way deemed practical by the legislative body (§54954.1).

Public Testimony: Agendas for regular meetings must provide the opportunity for the public to directly address the legislative body on any item on the agenda either before or during its consideration of the item. Further, every agenda for a regular meeting must provide the opportunity for members of the public to directly address the legislative body on any subject under the jurisdiction of the body (§54954.3(a)). Special meetings must also include the opportunity for members of the public to directly address the legislative body concerning any item, before or during consideration of the item, that has been described in the meeting notice.

The legislative decision-making body may limit the time at its meetings for public testimony on each issue and for each speaker to a reasonable period of time relative to the number of agenda items, the complexity of each item, and the number of persons wishing to address each item (75 Ops.Cal.Atty.Gen. 89 (1992)). The legislative body may also prohibit members of the public who speak during the time permitted on the agenda for public expression, from commenting on matters which are not within the subject matter jurisdiction of the body. However, the legislative body must exercise care that these requirements themselves do not violate the public's freedom of expression (78 Ops.Cal.Atty.Gen. 224 (1995)).

II. PERMIT STREAMLINING ACT

Reviewing the Permit Streamlining Act and its requirements will help to place the more specific requirements for public notice, circulation, and review into proper context. The Permit Streamlining Act (§65920 et. seq) requires public agencies (including charter cities per §65921) to follow standardized time limits and procedures for specified types of land use decisions. For the purposes of the Act, "development projects" applies only to adjudicatory approvals such as tentative maps, conditional use permits, and variances (*Landi v. County of Monterey* (1983) 139 Cal.App. 3d 934). Ministerial projects such as building permits, lot line adjustments, and certificates of compliance are not subject to the time limits established under the Act (*Findleton v. El Dorado Co. Board of Supervisors* (1993) 12 Cal. App. 4th 709).

The Permit Streamlining Act is reminiscent of a flashing light. It turns on when an application is submitted, off when accepted as complete and the environmental review (CEQA) process begins, and on again after the CEQA determination has been made (§65950).

Procedural Requirements:

All public agencies must establish one or more lists specifying, in detail, the information required from applicants for a development project (§65940). Upon receipt of a project application containing a statement identifying the application as being for a "development permit," an agency has **30 calendar days** to notify the applicant, in writing, of whether or not the project application is complete enough for processing. When rejected as incomplete, the agency must identify where deficiencies exist and how they can be remedied. The resubmittal of the application begins a new **30-day** review period. If the agency fails to notify the applicant of completeness within either of the 30-day periods, the application is deemed to be complete (§65943; *Orsi v. City Council* (1990) 219 Cal. App. 3d 1576). If rejected as incomplete a second time, the applicant may appeal the decision to jurisdiction's hearing body who must make a final written determination within **60 calendar days**. Again, failure to meet this time period constitutes acceptance of the application as complete.

Once complete and accepted, the agency then proceeds with the CEQA process, and the approval or denial of the project.

The Permit Streamlining Act includes time limit provisions for taking action on a project after the environmental determination is made. When an EIR is certified for a project, the public agency shall approve or deny the project within **180 days** from the date of certification. When a project is found to be exempt from CEQA or a negative declaration is adopted for a project, the public agency shall approve or deny the project within **60 days** from the date of the determination or adoption (§65950 and Public Resources Code §21151.5). If no action is taken within the allotted time, the project may be deemed approved by action of the Act.

An application can only be deemed approved as a result of failure to act if the requirements for public notice and review have been satisfied (§65965). Two options are available to an applicant to ensure that these requirements are met (§65956(a) and §65956(b)): (a) the applicant may file an action pursuant to Section 1085 of the Code of Civil Procedure (civil mandamus) to force the agency to provide notice or hold a hearing, or both; (b) if the applicant has provided **seven (7) days** advance notice to the permitting agency of intent to provide public notice, an applicant may provide public notice using the distribution information provided pursuant to §65941.5 no earlier than **60 days** from the expiration of the time limits. The notice must include the required contents as provided for by §65956(b) and a statement that the project will be deemed approved if the permitting agency has not acted within **60 days**. Notice by the applicant extends the time limit for action by the permitting agency to 60 days after the public notice is sent out.

III. CEQA

The California Environmental Quality Act (CEQA) (Public Resources Code §21000, et seq.) includes many procedural requirements that the practitioner must keep track of, including those for notice and review. This section will cover the three basic steps of CEQA and the related requirements under exemptions, negative declarations, and environmental impact reports (EIR).

> It is important to note that as intended by the Legislature, the legal requirements for providing public notice under CEQA will, under normal circumstances, be met when the agency "makes a good faith effort to follow the procedures prescribed by law" (*Newberry Springs Water Association v. County of San Bernardino* (1984) 150 Cal.App. 3d 740).

Exemptions:

CEQA exempts a number of specific types of projects from its provisions under two broad categories of exemptions, statutory and categorical. After approving a project for which an exemption was employed, the lead agency may file a Notice of Exemption with the county clerk and, when the lead agency is a state agency, OPR. Notices of Exemption must be available for inspection within 24 hours and remain posted for a minimum of **30 days**. When filed with the county clerk, at the end of the 30 days the clerk must return the notice to the lead agency who must then retain it for not less than 9 months. The filing of this notice begins a **35 day** statute of limitations on legal challenges to the agency's decision. If a notice is not filed, a **180 day** statute of limitations applies from the date the project is approved, or commencement of the project where no formal approval is required.

Negative Declaration:

A negative declaration may be adopted when there is no substantial evidence in light of the whole record that the project may result in a significant adverse environmental effect. This would include projects for which a potential effect was identified, but revisions or mitigation measures imposed on the project will avoid the effect or reduce it to a level of insignificance (mitigated negative declaration).

A lead agency must provide notice of the intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located (CEQA Guidelines §15072). The county clerk must post the notice within 24 hours of receipt. The notice of intent shall provide a review period of not less than **20 days**. When submitted to the State Clearinghouse for review by state agencies, the review period must not be less than **30 days**, unless a shorter review period, of not less than **20 days**, is approved by the Clearinghouse (Public Resources Code §21091).

The lead agency must mail the notice of intent to the last known name and address of all organizations and individuals who have previously requested notice and shall also provide notice in at least one of the following ways to allow time for public review consistent with the previously stated time limits:

(a) Publication at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of notice on and off-site in the area where the project is to be located; or
(c) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

Notice must be given to transportation planning agencies and public agencies with transportation facilities within their jurisdiction for projects which have statewide, regional, or areawide significance (Public Resources Code §21092.4).

A lead agency is not precluded from providing additional notice by other means, nor is it precluded from providing the notice at the same time and in the same manner as the public notice required by any other laws pertaining to the project so long as the appropriate CEQA noticing requirements are met.

The notice of intent must include all of the following (CEQA Guidelines §15072):

(a) Project description and location

(b) Review periods including the beginning and ending dates for which the lead agency will accept comments. If a shortened review period is approved, the notice must state that it will be a shortened review period.

(c) The date, time, and place of any scheduled public meetings or hearing to be held by the lead agency on the proposed project, when known to the agency at the time the notice is given.

(d) The address(es) where copies of the negative declaration may be obtained or reviewed during business hours, including any revisions or mitigations to the project and all project related documents.

(e) Statement of the sites presence on any of the lists compiled by the Department of Toxic Substances Control(Cal-EPA) under Government Code §65962.5 including, but not limited to hazardous waste facilities, hazardous waste property, hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

(f) Any other information specifically required by statute or regulation for a particular project or project type.

The lead agency must file a Notice of Determination within **5 working days** (15075(d)) after it approves a project. If a local agency is the lead agency, the notice must be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, or a state agency is the lead agency, the notice must also be filed with the State Clearinghouse. The Notice of Determination must be posted and available for public inspection for a period of at least **30 days** (CEQA Guidelines §15094).

Filing a Notice of Determination within the 5 working days begins a **30 day** statute of limitations on court challenges to approval. Otherwise, the statute of limitations is **180 days** from the date the decision to carry out or approve the project is made, or commencement of the project where no formal approval is required (CEQA Guidelines §15112).

Environmental Impact Report (EIR):

Notice of Preparation:

When the lead agency determines that an EIR is required for a project, it must circulate a Notice of Preparation (NOP) to each Responsible and Trustee Agency advising them of its intention to prepare a Draft EIR (CEQA Guidelines §15082). In addition, if one or more state agencies is a responsible or trustee agency, the NOP should be sent to the State Clearinghouse along with a list of the agencies that should review the project.

A Responsible Agency includes any public agency, other than the lead agency, which has discretionary approval power over a project (CEQA Guidelines §15381). A Trustee Agency is a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of California (CEQA Guidelines §15386) including: California Department of Fish and Game, State Lands Commission, Department of Parks and Recreation, and the University of California for particular lands.

Public Resources Code §21080.4 further provides that the lead agency must convene a scoping meeting upon the request of any affected responsible or trustee agency. Additionally, CEQA Guidelines §15083.5 requires that a lead agency send a copy of the Notice of Preparation to each public water system which serves or would serve projects meeting specific criteria including amendments to general and specific plans, hotel and motels with more than 500 rooms, and others. The lead agency shall request that the system both indicate whether the water demand associated with the project was incorporated into its last urban water management plan and whether its total project supplies will meet the projected water demand associated with the proposed project in addition to the system's existing and planned future uses.

The minimum content requirements for an NOP include (CEQA Guidelines §15082(a)(1)):

- Description of the project;
- Location of the project indicated on an attached map (preferably a topographical map), or by a street address in an urbanized area;
- Salient environmental issues; and
- Probable environmental effects of the project.

When an agency receives an NOP, a **30 calendar day** review period begins. Each agency must provide the lead agency with a response within the 30 days. The response must provide specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of responsibility over the project (CEQA Guidelines §15103).

Draft EIR:

At such time as the draft EIR is completed, a Notice of Completion must be filed with the State Clearinghouse. The notice must include a brief description of the project, the proposed location of the project, an address where copies of the draft EIR are available, and the period during which comments will be received on the draft EIR (CEQA Guidelines §15085).

When the lead agency sends the Notice of Completion to the State Clearinghouse, it must also provide public notice of the availability of the draft EIR. The notice and opportunity for public review must not be less than **30 days** nor should it normally be longer than **60 days**. When submitted to the State Clearinghouse for review by state agencies, the review period must not be less than **45 days,** unless the Clearinghouse grants a shorter period of not less than **30 days** (CEQA Guidelines §15105).

The notice of availability must be mailed to the last known name and address of organizations and individuals who have previously requested such notice in writing, and must also be given following one of the following procedures:

1. Published at least one time in a newspaper of general circulation in the affected by the project. If more than one area is affected, the notice must be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
2. Posting by the lead agency on and off-site in the area where the project is proposed to be located; or
3. Direct mailing to owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

Additional notice may also be given by any other means deemed appropriate by the agency and may be given at the same time and in the same manner as public notice otherwise required by law for the project.

The public notice must disclose all of the following (CEQA Guidelines §15087):

a. Project description and location
b. Review periods including the beginning and ending dates for which the lead agency will accept comments. If a shortened review period is approved, the notice must state that it will be a shortened review period.
c. The date, time, and place of any scheduled public meetings or hearing to be held by the lead agency on the proposed project, when known to the agency at the time the notice is given.
d. A list of the significant environmental effects anticipated as a result of the project, to the extent which the effects are known to the lead agency at the time of the notice.
e. The address(es) where copies of the draft EIR and all documents referenced in the EIR will be available for review. This location shall be readily accessible to the public during normal working hours.
f. Statement of the sites presence on any of the lists compiled by the Department of Toxic Substances Control(Cal-EPA) under Government Code §65962.5 including, but not limited to hazardous waste facilities, hazardous waste property, hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

The Notice of Availability must be posted in the office of the county clerk of each county in which the project will be located for a period of at least **30 days**. The county clerk must post such notices within **24 hours** of receipt.

CEQA Guidelines §15086 requires lead agencies to consult with and request comments on the draft EIR from responsible agencies, trustee agencies, other state, federal, and local agencies which exercise authority over resources which may be affected by the project, and may also consult with any person who has special expertise in any environmental effect involved.

Draft EIRs subject to state agency review or which are of statewide, regional, or areawide significance must be distributed through the State Clearinghouse (CEQA Guidelines §15087(d), §15206). Clearinghouse distribution provides assurance that all state permitting agencies will be notified of the review period and are given the opportunity to respond. When submitted to the State Clearinghouse, the public review period must be at least as long as the review period established by the Clearinghouse (CEQA Guidelines §15087(e)). Similarly, lead agencies are encouraged to use areawide clearinghouses for distributing documents to regional and local agencies.

In order to promote the public participation goals of CEQA, lead agencies are encouraged to use the public library system to make EIRs available to the public.

Recirculation:

CEQA Guidelines §15088.5 requires that an EIR which has been made available for public review, but not yet certified, be recirculated whenever significant new information has been added to the EIR. The entire document need not be circulated if revisions are limited to specific portions of the document. The recirculated portions or document must be sent to responsible and trustee agencies for consultation and fresh public notice must be given in the manner provided for a draft EIR.

Final EIR:

Lead agencies must provide a written response to comments made on the draft EIR by each public agency at least **10 days** prior to the certification of the final EIR, pursuant to Public Resources Code §21092.5.

The lead agency may certify the EIR and approve the project simultaneously, or it may wait to approve the project at a later date subject to the time limitations of the Permit Streamlining Act.

The lead agency must file a Notice of Determination within **5 working days** after approval of a project by the lead agency. If a local agency is the lead agency, the notice shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, or a state agency is the lead agency, the notice shall also be filed with the State Clearinghouse. The Notice of Determination must be posted and available for public inspection for a period of at least **30 days** (CEQA Guidelines §15094).

Filing a Notice of Determination within the **5 working days** begins a **30 day** statute of limitations to court challenges. Otherwise, the statute of limitations is **180 days** from the date the decision to carry out or approve the project is made, or commencement of the project where no formal approval is required (CEQA Guidelines §15112).

CEQA by itself does not require a public hearing on any project. Its provisions require notice and afford opportunities to comment on a project. The specific public notice and hearing requirements for land use projects are discussed in the following section.

IV. PUBLIC HEARING NOTICES FOR LAND USE PROJECTS

In general, public hearing notice requirements for land use projects are found under §65090 and §65091.

Basic Notice Requirements

Projects requiring public hearings under the Planning and Zoning Law must have notice published in at least one newspaper of general circulation within the jurisdiction of the local agency at least **10 days** prior to the hearing. Notice must be published one time pursuant to §6061. If there is no newspaper of general circulation, the notice must be posted in at least three public places within the jurisdictional boundaries of the agency at least **10 days** prior to the hearing (§65090).

Content: The public hearing notice must include, at a minimum, the date, time, and place of the hearing, the identity of the hearing body, an explanation of the matter to be considered, and a general description, in the form of text or a diagram, of the location of the property that is the subject of the hearing (§65094).

In addition, when a project is required to be noticed pursuant to §65091, it must be provided in each of the following ways:

(1) The public hearing notice must be mailed or delivered to the owner of the property or the owner's agent, and the project applicant at least **10 days** prior to the hearing (§65091(a)(1)).

(2) Notice must be mailed or delivered at least **10 days** prior to the hearing to each local agency providing water, sewer, streets, roads, schools or other essential facilities, or services to the project, whose ability to provide those facilities and services may be significantly affected (§65091(a)(2)).

(3) Notice must also be mailed or delivered at least **10 days** prior to the hearing to all owners of property as shown on the latest equalized assessment roll within 300 feet of the *exterior boundary* of the property that is subject of the hearing. In lieu of the assessment roll, the agency may use the records of the county assessor or tax collector containing more recent information. Notice must also either be published in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least **10 days** prior to the hearing or posted at least **10 days** prior to the hearing in at least three public places within the boundaries of the agency, including one public place in the area directly affected by the proceeding (§65091(a)(3)).

Alternatively, if the mailed notice would be to more than 1,000 property owners, the agency may provide notice through a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the agency's jurisdictional boundaries, at least **10 days** prior to the hearing (§65091(a)(3)(1)).

Where public notice is required to be given pursuant to §6062(a), it shall be for **10 days** in a newspaper regularly published once a week or more. Two publications, within at least five days intervening between each publication date, not including the actual date of publication, is sufficient. The period of notice begins upon the first day of publication and ends on the tenth day.

In addition to these requirements, notice may be given by an agency through any other method it finds to be necessary or appropriate.

Legislative Projects

Projects requiring approval by a legislative decision-making body are normally subject to public notice and at least one public hearing. The public hearing notice requirements are established by statute.

General and Specific Plans:

The adoption or amendment of a general plan or specific plan is a legislative act subject to public review, notice, and hearings pursuant to (§65353-65356 general plan and §65453 specific plan). The following provisions apply to counties and general law cities. Charter cities may adopt similar requirements.

As plans for the physical development of a community, the planning agency must provide opportunities for review and involvement by citizens, public agencies, public utility companies and other community groups through public hearings and other means pursuant to §65351. Prior to consideration of the plan for adoption, it must be referred to the entities listed under §65352 including, but not limited to cities, counties, and special districts which may be affected

by the plan, schools within the planning area, federal agencies, public water system agencies, and others. Each reviewing body has **45 days** to comment from the date the referring agency mails or delivers the plan, unless the planning agency specifies a longer period.

Upon completion, the plan is forwarded to the planning commission which must hold at least one public hearing pursuant to §65353 prior to forwarding a recommendation to the legislative body. Public notice of the hearing must be made pursuant to §65090. If the adoption or amendment would change the permitted uses or intensity of uses of property, public notice of the hearing must also be given pursuant to §65091(a)(1)(2). Under §65091(a)(3), notice may be given by publication in a newspaper of general circulation if it would be to more than 1,000 persons (§65353(c)).

In addition, the commission must provide advance notice to anyone who requests it in writing pursuant to §65092 or §65945. The commission may provide additional notice in any other manner it deems necessary or desirable.

Anyone may appeal the commission's decision to the legislative body. The procedures for appeal are set forth under §65354.5 which requires a hearing by the legislative body when a written request is filed with the clerk within **5 days** of the commission's hearing. The appeal may be unnecessary if the legislative body intends to hold a public hearing on the matter anyway.

Once the recommendation of the planning commission or other advisory body has been forwarded, the legislative decision-making body must provide public notice pursuant to §65090 and hold at least one public hearing prior to adopting or amending a general or specific plan (§65355).

The legislative body must also notify anyone who makes a written request for notice pursuant to §65092 or §65945. When any part of a cemetery is designated for other than cemetery uses, the notice, as with the planning commission's, may also be subject to the requirements under §65096.

Once the hearing(s) have been completed, the legislative body will take action to approve, conditionally approve, or deny the plan. If the plan is to be approved with a substantial modification not previously considered by the commission, the plan must be referred back to the commission for their reconsideration and recommendation (§65356). The commission has **45 days** in which to respond.

Separately, public involvement in the preparation, adoption, and amendment of general and specific plans should be encouraged through the provision of opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the agency deems appropriate pursuant to §65351.

Zoning and Rezoning:

The adoption or change of zoning ordinances is subject to specific public notice and hearing requirements. Specific minimum procedural standards have been adopted by the Legislature to ensure the uniformity of and access to zoning and planning hearings. The minimum standards provided in §65804 must be incorporated into the procedures of all city and county zoning hearings and include the following: (1) All zoning agencies must develop, publish and make available rules for the conduct of hearings so that all interested individuals have advance knowledge of how hearings will proceed. The rules must incorporate §65853 to §65858. (2) Cities and counties must take and keep records of all hearings of which a copy must be made available at cost. (3) When written, staff reports must be made available to the public prior to or at the beginning of a hearing and shall be a matter of public record. (4) When any hearing is held on an application for a change of zoning for parcels of at least 10 acres, a staff report with recommendation and the basis for such recommendation must be included in the record of the hearing.

> Section 65804 applies to all general law cities, counties and charter cities:
>
> The Legislature finds and declares that the property owners have the right to public notice regarding proposals that affect the permitted use of property...The Legislature further finds and declares that the right to notice regarding the permitted uses of property is an issue of statewide concern, affecting all property owners, and not a municipal affair...

The planning commission must provide public notice pursuant to §65090 and §65091 and hold at least one public hearing prior to rendering a decision and forwarding a written recommendation to the legislative body. Once the hearing is complete and a decision

has been rendered, the planning commission's decision must be forwarded in the form of a written recommendation which includes the reasons for the recommendation, and its consistency with the general plan or specific plan(s) (§65855).

Once the legislative body has received the planning commission's recommendation, it must give public notice pursuant to §65090 and hold at least one public hearing. Action may be taken at the public hearing to approve, modify, or disapprove the ordinance consistent with planning commission's recommendation. If the legislative body amends the recommendation, the amendments must be referred back to the planning commission for report and recommendation prior to final approval. However, this referral does not require a public hearing (§65857). In instances where the planning commission fails to report back within **40 days**, or for such a period as prescribed by the legislative body, the inaction may be deemed as its concurrence in the proposed amendment.

If the planning commission's further recommendation is either to not approve the ordinance or to not approve a change to the ordinance inconsistent with the commission's original recommendation, the legislative body is not required, unless by local ordinance, to take further action. However, if the applicant has filed an appeal with the clerk within **5 days** of the planning commission's filing of its recommendation pursuant to §65354.5, a hearing shall be noticed pursuant to §65090 and given by the legislative body (§65856).

Interim Ordinances:

Local agencies who are in the process of preparing, studying, or adopting a general plan, specific plan, or zoning ordinance or amendments thereof which will be acted upon within a reasonable period of time, may, in order to protect the public health, safety or general welfare, adopt an interim ordinance as an urgency measure. Adoption of an interim ordinance requires a four-fifths affirmative vote of the legislative body. This is done to avoid conflicts between land use proposals and contemplated changes to plans and/or ordinances and may be done without following standard public notice requirements. Two options are available for adoption:

• Option 1:

An interim ordinance may be considered without prior public notice. Upon approval, the ordinance expires **45 days** from the date of its adoption. However, it may be extended for up to **10 months and 15 days**. Subsequently, it may be extended for one year if notice pursuant to §65090 and a public hearing are provided for the extension (§65858). No more than two extensions can be granted.

• Option 2:

Alternatively, if prior public notice is given pursuant to §65090, an interim ordinance may be adopted, in which case it will expire **45 days** from adoption. Thereafter, following another public notice (§65090) and hearing, it may be extended by four-fifths vote for **22 months and 15 days** (§65858(b)) instead of the 10 months and 15 days allowed without notice.

Under either alternative, the statutory provisions for interim ordinances limit their use to two years, including all extensions. Section 65858 allows for the adoption of a new interim ordinance upon the expiration of a prior ordinance when the new interim ordinance covers differing subject matter. In all cases, the adoption or extension requires findings to be made that there is a current and immediate threat to public health, safety, or welfare and that the approval of subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat. The findings must be enumerated in the adopted ordinance.

The legislative body is required to issue a written report **10 days** prior to the expiration or extension of an interim ordinance, describing measures which will avoid the potential inconsistency which necessitated its adoption.

Development Agreements:

A development agreement between a local government and a developer limits the applicability of newly enacted ordinances to ongoing development projects. Development agreements are legislative acts which must be adopted by ordinance, be consistent with the general plan and any specific plan, and may be repealed or changed by initiative and referendum (§65867.5).

The adoption of a development agreement by a local government requires public notice pursuant to both §65090 and §65091. A hearing must be held before the planning commission prior to forwarding a recommendation to the legislative body. Notice of the intention to consider the adoption of a development agreement must also be given prior to a hearing before

the legislative body pursuant to §65090 and §65091, in addition to any other notice required for other actions being considered concurrently with the development agreement (§65867)

Should it be necessary and agreed to by mutual consent to amend or cancel the development agreement, public notice is required in the same manner as it is for adoption (§65868).

Adjudicatory Projects

Adjudicatory projects, including a tentative or parcel map for which a tentative map is not required, use permits, variances, and other leases, permits, and discretionary projects are subject to the specific requirements for public notice, circulation, review and hearings set out by §65090 and §65091.

Tentative Maps and Parcel Maps:

Notice of Public hearings for a subdivision map must be provided consistent with §65090 and §65091 (§66451.3). If a subdivision converts property into a condominium project, community apartment project or stock cooperative project, the notice must also be provided by mail to each tenant of the project, include notification of the right to appear and be heard, and conversion findings (§66427.1). This requirement may be satisfied by serving the notice in compliance with the legal requirements for service by mail.

Tentative and parcel maps are subject to the time periods established pursuant to the Permit Streamlining Act. The time periods commence after certification of the EIR, adoption of a negative declaration, or determination that the project is exempt from CEQA.

Other entitlements:

Applications for variances from the requirements of a zoning ordinance, use permits, and other equivalent development permits including proposed revocations, modifications, and appeal from the action taken on any applications must be subject to a public hearing pursuant to §65905, except as provided for by §65901(b). Notice of hearings must be given pursuant to §65091. The requirements of due process apply to all administrative proceedings conducted by a board of zoning adjustment or zoning administrator when authorized by ordinance to make decisions on applications for specified types of variances.

V. OTHER TYPES OF ACTIONS

Permit and Application Fees:

Local government agencies may collect a fee or charge for filing, processing, and/or checking various applications and providing services. In order to levy a new fee or to approve an increase in an existing fee, a local agency must hold at least one public hearing on the matter. Public notice of the time and place of the meeting, a general explanation of the matter to be considered, and a statement that cost data is available for examination, must be mailed at least **14 days** prior to the meeting to any interested individual who files a written request with the local agency for notice of meetings on new or increased fees or service charges (§66016). A notice containing this information must also be published in accordance with §6062(a).

At least **10 days** prior to the meeting, the agency must make available the public data indicating the amount of cost or the estimated cost of providing the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenue.

Only the city council or board of supervisors has the authority to adopt a new fee, service charge, or increase thereof (§66016). The adoption or increase of a fee or charge must be made by ordinance or resolution and becomes effective **60 days** following the final approving action (§66017).

Fees must not exceed the estimated reasonable cost of providing the service for which the fee is charged. Fees which exceed costs are considered to be special taxes subject to submittal to, and approval by, a popular vote of two-thirds of those electors voting on the issue (§66014).

Proposition 218, known as the "Right to Vote on Taxes Act," does not apply to the levying or increase in permit and/or application fees other than to the extent that these fees must be proportional to the cost of providing the service and may be reduced or repealed through the initiative process. Please refer to OPR's publication *A Planner's Guide To Financing Public Improvements* (1997) for a complete discussion of the applicability of Proposition 218.

Redevelopment:

California's Community Redevelopment Act (Health and Safety Code §33330) authorizes cities and counties to establish redevelopment agencies for the purpose of adopting and implementing redevelopment plans. The Brown Act (Government Code §54950 et seq.) provides that the decisions of a redevelopment agency are public and any official action is subject to public notice and posting of agendas **72 hours** prior to holding public meetings (Government Code §54954.2).

All section references given under this topic are to the Health and Safety Code unless otherwise noted.

Planning Commission: Prior to being forwarded to the legislative decision making body, a proposed plan or amendment must first be submitted to the planning commission for a determination and recommendation based upon the plan's conformity to the general plan. At least **72 hours** prior to the meeting, an agenda containing a brief general description of the item and specifying the time and location of the meeting must be posted in a location freely accessible to the public (Government Code §54954.2). Within **30 days** of receipt of the plan or amendment, the planning commission must forward its recommendation to the legislative body. If it fails to act within the **30 days**, it is deemed to have waived its opportunity for providing a recommendation (§33347).

Project Area Committee: At the same time the plan or amendment is forwarded to the planning commission, it must also be forwarded to the Project Area Committee (PAC) if one has been formed pursuant to §33385. The committee may, if it chooses, prepare a report and recommendation for consideration by the legislative body (§33347.5).

Redevelopment Agency: The redevelopment agency must hold a public hearing to take action to approve a redevelopment plan. Public notice must be published in a newspaper of general circulation one (1) time per week for four (4) successive weeks prior to the hearing and include information pursuant to §33349. In addition, copies of the notice must be mailed to the last known owner as shown on the last equalized assessment roll of the county or city for each parcel of land in the area designated in the redevelopment plan. Notice must be sent, via first class mail, to all residents and businesses in the project area **30 days** prior to the hearing. All notices must be mailed by certified mail with return receipt requested (§33349).

Notices must also be mailed to each agency responsible for levying property taxes within the project

area including a statement of the proposed use of the tax increment other than being paid to the treasury (§33350.1).

Upon approval of the plan by the redevelopment agency, it must forward the plan and report (§33352) to the legislative body for adoption (§33351).

Legislative Decision Making Body: The legislative body must also hold a public hearing to adopt a redevelopment plan. Public notice of the hearing must be given by publication in a newspaper of general circulation in the county in which the area lies, one (1) time per week for four (4) successive weeks. The content of the notice must be consistent with the information as provided for under §33361 including, but not limited to, a description of the redevelopment area boundaries and the date, time, and place where public testimony may be given.

Any change to the plan or plan boundaries must first be referred back to the planning commission for review, recommendation, and response within **30 days** (§33363.5).

Joint Hearing: Alternatively, the two hearings may be combined into a single joint hearing pursuant to §33350 when the members of the redevelopment agency are the same as the legislative body. Public notice of the hearing must be given pursuant to §33349, §33350, and §33361, as previously discussed. Adoption must then proceed by the legislative adoption procedures pursuant to §33356.

Notices of Violation:

Pursuant to the Subdivision Map Act, when a local agency has knowledge that a parcel or parcels of property have been divided in violation of the Act or of the local subdivision ordinance, it must send notice of its intent to record a notice of violation to the current owner. The notice must be sent by certified mail, contain a detailed description of the property, names of the property owners, and a statement of the opportunity for the owner to present evidence. It shall also provide a time, date, and place for a hearing at which the owner may present evidence to the legislative body or advisory agency why a notice should not be recorded. Further, is must also describe the violation and explanation of why the parcel(s) is not lawful under §66412.6.

A hearing of the matter must be held no sooner than **30 days** and no later than **60 days** from the date the notice was mailed. If the property owner does not inform the agency of their objection to recording a notice of violation within **15 days** of receipt of the notice, the legislative body or advisory agency may record the notice of violation. Where the property owner has provided evidence, the legislative body or advisory agency must hold a hearing to determine whether or not the property is in violation. If determined not to be in violation, the agency must mail a clearance letter to the owner. If determined to be in violation, the notice of violation must be recorded with the county recorder.

VI. COURT INTERPRETATIONS

***Landi v. County of Monterey* (1983) 139 Cal.App.3d 934**

An application was filed to rezone property to allow for the construction of condominiums. After preparing an environmental impact report, the planning commission and the board of supervisors subsequently denied the rezoning. The property owner filed suit contending that the application was approved by an operation of law due to the failure of the county to act within the one year time limit prescribed by the Permit Streamlining Act. The trial court held for the county and the decision was appealed.

The Permit Streamlining Act requires that a development project be approved or denied within one year from the date the application is accepted as complete. The appellate court's decision is based upon whether a rezoning is a "development project" subject to adjudicatory approval and the Permit Streamlining Act. The court found that a rezoning is a legislative act ("generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts" (*Patterson v. Central Coast Regional Commission* (1976) 58 Cal.App.3d 833)). In this case, a rezoning is the change of a rule which is to be applied to all future cases, namely, the allowable uses of the property. Thus, the one year limitation of the Permit Streamlining Act is not applicable to rezonings.

***Orsi v. City Council* (1990) 219 Cal.App.3d 1576**

An application to amend a planned unit development permit was filed. The permit was assigned an application number and distributed to reviewing agencies and departments. The application was rejected and notifice given to the applicant 11 days after the end of the 30 day time limit established under the Permit Streamlining Act for acceptance or rejection of an application. The applicant proceeded to submit a revised application for which a negative declaration was approved by the city council. Staff prepared a planned unit development permit which was recommended for denial by the planning commission. The city council heard the project, required that an EIR be prepared and later denied the permit. Subsequently, the applicant filed a petition for writ of ordinary mandamus, administrative mandamus, and declaratory relief based upon several contentions, the majority of which were rejected by the trial court. The decision was appealed with the court finding the following:

The first application was accepted as complete as an operation of law due to the failure of the city to notify the applicant of its completeness within 30 days of submittal. The first application is the basis for the remaining time limits because the second application would have been necessary only if the city had made a timely notification of rejection. The time limits set forth by the Permit Streamlining Act place a mandatory duty on the agency to accept or reject the application within the specified time limits.

Secondly, under the law at that time, development projects had to be either approved or denied within six months of being accepted as complete if a negative declaration was adopted. In this case, the city argued that no negative declaration was adopted because the council did not have the actual permit for consideration at the time of the hearing where action was taken on the negative declaration. The appellate court found that CEQA requires the lead agency to consider the proposed negative declaration and any comments received prior to approving the project. There is no requirement that the consideration of a project and its negative declaration occur concurrently.

Finally, the court found that there was no waiver of the time limits by mutual consent. Therefore, because the city did not approve or disapprove the application within the statutory time period, the project was approved by an operation of law.

***Newberry Springs Water Association v. County of San Bernardino* (1984) 150 Cal.App.3d 740**

The county adopted a negative declaration and approved a permit for a dairy. Opponents of the project filed suit contending that they had not received adequate notice of the preparation of the negative declaration pursuant to the California Environmental Quality Act and that an EIR should be prepared. The trial court and the appellate court ruled that the opponents had been given adequate notice of the preparation of the negative declaration and that substantial evidence supported the county's determination.

The State Supreme Court affirmed the appellate court decision. The mailing of referral memos and notices of hearings prior to the adoption of the negative declaration demonstrated that the county made a good faith effort to provide notice pursuant to CEQA. The

court cited the Legislature's intent that the statutory requirements for public notice are satisfied when the agency makes a good faith effort to follow the procedures prescribed by law, as a general rule. The opponents attendance and testimony at the hearings also demonstrated adequate notice.

***Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547**

A large residential development was conditionally approved by the planning commission. At a separate city council meeting where the item was not on the agenda, public objections to the commission's action were heard; however, no formal appeal was filed. Following the objections, the council voted to appeal its planning commission's decision to itself. It also voted to waive the 72 hour public notice requirement of the Brown Act and to hear the appeal as an urgency matter. After discussing the matter, it voted to conduct a subsequent hearing at which the project was denied.

The applicants filed a petition for writ of mandate and complaint for violation of civil rights. The trial court found for the city in that although it had not complied with applicable codes and statutory law in its first decision, the final deciding hearing was proper. The court reasoned that although procedurally improper for the council to appeal the decision to itself, someone would have appealed the decision anyway.

The court of appeal reversed and ordered a nullification of the council's appeal to itself. The cumulative errors of the city violated the applicants substantive and procedural due process rights. The city improperly appealed the commission's decision to itself and the reasoning that it would have been appealed anyway is speculative and not supported by the record. It improperly applied the Brown Act's urgency measure failing to provide proper public notice and an agenda 72 hours prior to the public hearing and failed to file written findings in resolutions within the time periods permitted.

***Bickel v. City of Piedmont,* Nov. 20, 1997, 16 Cal.4th 1040**

The Bickels submitted drawings to the Planning Commission for approval of a proposed second-story addition to their home. The Commission, at a hearing, concluded that a partial second story was the best option for their property. The applicants requested that the matter be continued for six months, and submitted revised drawings. At a subsequent hearing, the Commission, with the applicant's approval, continued the matter for an additional three months. Another set of revised drawings were submitted and subsequently denied by the Commission. The decision was appealed to the City Council, asserting that the remodeling application was "deemed approved" because the Commission failed to act on the matter within the time limits set out in the Permit Streamlining Act.

The city council upheld the planning commission's decision. A trial court denied the applicant's petition for a writ of mandate holding that the time limits of the Act are subject to waivers and that the applicants had waived the time limits. The appellate court reversed, concluding that the time limits are primarily for the benefit of applicants seeking agency approval and serving that purpose would bar waivers.

The California Supreme Court reversed, holding that there is nothing in the language of the Act prohibiting an applicant from voluntarily waiving the statutory time limits. By indicating to the Commission that they wanted an extension, the applicants voluntarily waived their rights under the Act.

***Findleton v. El Dorado County* (1993)12 Cal.App.4th 709**

The applicant filed an application for a Certificate of Compliance in January of 1991. The application was conditionally approved in September of 1991. The applicant filed a petition for alternative writ of mandamus to force the county to issue a non-conditional certificate of compliance contending that the county failed to act within the 6 month time limit of the Permit Streamlining Act. The trial court denied the petition and an appeal followed.

The appellate court ruled specifically on the applicability of the time limits of the Act to Certificates of Compliance. The court ruled held the PSA is only applicable to "development projects." A certificate of compliance is a "ministerial project" requiring no exercise of discretion in the course of its approval. Therefore, the county's failure to act within the time limits of the Act did not entitle the applicant to issuance of a non-conditional certificate of compliance.

***Ciani v. San Diego Trust & Savings Bank* (1991) 233 Cal.App.3d 1604**

Applicants filed for a demolition permit to remove several historic structures located within the coastal zone. An EIR was prepared and certified. However, the city failed to act on the application within a timely manner resulting in the applicant providing public notice and filing a petition for writ of mandate for the

demolition permit and required coastal permit to be deemed approved. The permits were issued and resulting petitions for a temporary restraining order and injunctions were filed by opponents to the project and the Coastal Commission. The petitioners contended, amongst other things, that proper permit procedure was not followed and that the permits could not be issued until a 10-day coastal permit appeal period lapsed.

The appellate court held that although the permit was deemed approved by a local agency as an operation of law under the Permit Streamlining Act, the permit could be appealed to a state agency under the Coastal Act. The court found that: (1) the public notice was insufficient because it was not provided to the Coastal Commission, therefore issuance of a "deemed approved" permit was precluded; and (2) there are no provisions of the Permit Streamlining Act which would preclude appeals of coastal permits under the Coastal Act.

VII. ATTORNEY GENERAL OPINIONS:

78 Ops.Cal.Atty.Gen. 327 (1995)
Subject: Posting of Public Hearing Agenda

Question: May weekend hours be counted as part of the required 72-hour period for the posting of an agenda prior to the regular meeting of the legislative body of a local agency? Would the posting of an agenda for a regular meeting of the legislative body of a local agency for 72 hours in a public building that is locked during the evening hours satisfy the statutory requirements for posting the agenda?

Conclusion: Weekend hours may be counted as part of the 72-hour period for the posting of an agenda prior to the regular meeting of the legislative body. The posting of an agenda for 72 hours in a public building that is locked during the evening hours would not satisfy the statutory requirements for posting the agenda.

Analysis: The Ralph M. Brown Open Meeting Act (Government Code §54950, et seq.) requires that the agenda of a regular meeting of a local agency be posted 72 hours in advance of the meeting. Weekend hours do count as part of the notice period. However, the notice must be posted in a location where it may be read by the public at any time during the 72 hours prior to the meeting.

75 Ops.Cal.Atty.Gen. 89 (1992)
Subject: Public Testimony at Public Hearings

Question: May the legislative body of a local public agency limit public testimony on particular issues at its meetings to five minutes or less for each individual speaker, depending upon the number of speakers?

Conclusion: The legislative body of a local public agency may limit public testimony on particular issues at its meetings to five minutes or less for each speaker, depending upon the circumstances such as the number of speakers.

Analysis: Government Code §54954.3 provides the legislative body the discretion to limit public testimony to a reasonable period of time for an individual item. The amount of time may vary depending upon the circumstances in each case including the time allocated for the meeting, the number of agenda items, the complexity of each item, and the number of speakers.

78 Ops.Cal.Atty.Gen. 224 (1995)
Subject: Public Comment at Public Hearings

Question: May the legislative body of a local agency prohibit members of the public, who speak during the time permitted on the agenda for public expression, from commenting on matters that are not within the subject matter jurisdiction of the legislative body?

Conclusion: The legislative body of a local agency may prohibit members of the public, who speak during the time permitted on the agenda for public expression, from commenting on matters that are not within the subject matter jurisdiction of the legislative body.

Analysis: The Ralph M. Brown Act (Government Code §54954.3) allows public comment on only those matters that are "within the subject matter jurisdiction of the legislative body." Limiting public comment to such matters that serve the purposes of the legislative body in holding meetings is appropriate. However, the legislative body must exercise care in adopting "reasonable regulations" pursuant to Government Code §54954.3(b) to ensure that the regulations themselves do not violate the public's freedom of expression.

95 Ops.Cal.Atty.Gen. 614 (1996)
Subject: Standing Committees and Public Hearings

Question: Are the meetings of a standing committee composed of less than a quorum of the legislative body of a local public agency subject to the notice, agenda, and public participation requirements of the Ralph M. Brown Act, if the committee has the responsibility of providing advice concerning budgets, audits, contracts, and personnel matters to and upon request of the legislative body?

Conclusion: The meetings of a standing committee composed of less than a quorum of the legislative body of a local public agency are subject to the notice, agenda, and public participation requirements of the Ralph M. Brown Act, if the committee has the respon-

sibility of providing advice concerning budgets, audits, contracts, and personnel matters to and upon request of the legislative body.

Analysis: A standing committee having the authority to hear and consider issues relating to budgets, audits, contracts, and personnel matters is a "legislative body" under the terms of Government Code §54952(b), and its meetings are subject to the Act's requirements for notice, a posted agenda, and public participation.

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